

Att.: Clerk of the Court  
Judge Michael H. Dolinger  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
U.S. Courthouse-500 Pearl Street  
New York, N.Y. 10007

JUL 31 2008

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CLERK OF COURT  
JUL 31 2008

Michael Nash #04-R-0133  
Green Haven C.F.  
P.O. Box 4000  
Stormville, N.Y. 12582-0010

Re: Nash v Ercole, 08-Civ. 5293 (DLC)(MHD)

Date: July 27, 2008

Dear Judge Dolinger:

I'm writing this letter asking this Court for permission to file a Motion to Renew pursuant to New York Civil Practice Law and Rules § 2221.9 a Motion to Vacate Judgment pursuant to Criminal Procedure Law § 440.10 in the lower court on the grounds that I was denied my 5th and 14th amendment Constitutional rights to testify before the Grand Jury.

On July 9, 2008 I filed a Writ of Habeas Corpus in this court, which was deemed timely by Judge Denise Cote and assigned to Your Honor. I am now asking Your Honor to hold my petition in abeyance pending a state court determination of the issue that I wish for it to consider.

Sir, I had previously testified before the Grand Jury having been given proper notice by the People. Based on my testimony the Grand Jury did not return an indictment on any of the top counts now under consideration in this Court. However, they did indict on the least charges of attempted robbery and grand larceny. I was then released on bond.

Thereafter, the prosecutor, without notifying me, presented my case to a second Grand Jury, without my testimony and this Grand Jury returned an indictment on the most serious charges which are now before this Court.

I believe that I was entitled to be notified by the prosecutor of that proceeding and given a reasonable time to further exercise my right to appear as a witness. See People v Nathan Peters, N.Y.S.2d \_\_\_\_\_, (2007), People v Evans, 79 N.Y.2d 407 (N.Y. Ct. of App. 1992). My right to testify was a valued right that should have

ENDORSED ORDER

9/2/08 Application denied. Petitioner fails to demonstrate good cause for not having raised this issue on his direct appeal or by appropriate motion before filing his current petition. In any event, the claim does not provide a basis for habeas relief.

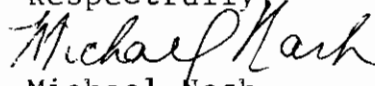
Judge Dolinger p. 2

been scrupulously protected, especially since I never waived my right to do so after I testified the first time. People v Carrington, 80 N.Y.2d 326 (N.Y. Ct of App 1992).

Under these circumstances I believe that my Constitutional right to testify in my own defense before the Grand Jury was strategically violated.

cc. mn/fl.

Respectfully

  
Michael Nash

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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Michael Nash,

Petitioner,

-against-

Docket No.  
08-Civ-5293 (DLC)  
(MHD)

Robert Ercole, Superintendent of Green Haven  
Correctional Facility

Respondent.

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AFFIDAVIT OF SERVICE


I, MICHAEL NASH, being duly sworn under penalty of perjury that I have placed in the U.S. mailbox located at the Green Haven C.F. and maintained by the U.S. Postal Service (1) original and (1) copy of the foregoing Letter to Judge Michael H. Dolinger, United States Magistrate Judge, requesting that the above-entitled action be held in abeyance to the following concerned parties:

(1) Attorney general of the State of New York  
120 Broadway, New York, N.Y.  
10027

(2) District Attorney of New York County  
One Hogan Place,  
New York, N.Y. 10013

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 27, 2008

  
Michael Nash  
#04-R-0133